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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,295	09/06/2007	Toshiaki Nakanishi	09792909-6681	5025

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SNR DENTON US LLP
P.O. BOX 061080
CHICAGO, IL 60606-1080

EXAMINER	
EDWARDS, PATRICK L	
ART UNIT	PAPER NUMBER
2624	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/596,295	NAKANISHI, TOSHIAKI	
	Examiner	Art Unit	
	Patrick L. Edwards	2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01-06-2011*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4* is/are rejected.

7)☒ Claim(s) *1-4* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

APPLICANT'S REMARKS

1. Applicant merely recites the languge of the amended claim and alleges that the previously-cited prior art fails to teach or suggest the just-recited limitations. A general allegation that a reference does not meet a claimed limitation, absent persuasive reasoning, does not overcome the previous rejection. See 37 CFR 1.111(b).

Claim Objections

2. The following sections of 37 CFR §1.75(a) and (d)(1) are the basis of the following objection:

> (a) The specification must conclude with a claim particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention or discovery.
>
> (d)(1) The claim or claims must conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description.

3. Claims 1-4 are objected to under 37 CFR §1.75(a) and (d)(1) as failing to particularly point out and distinctly claim the subject matter that the applicant regards as the invention.

Regarding claims 1 and 2, the metes and bounds of these claim are unclear as presently recited.

Claim 1 recites "determining that the inputted image is a snapshot photo image when (a) a ratio of the total area of all of the faces to the total area the inputted image is not more than a predetermined value, or (b) the ratio of the total area all of the faces to the total area of the inputted image images (sp) is less than or equal to the predetermined value and the number of faces is greater than or equal to a predetermined number". Note that these are alternatively recited (using the word "or") conditions for determining whether the inputted image is a snapshot

photo image. In other words, if either of the two criteria are met, this establishes the inputted image as a snapshot photo image.

Claim 1 further recites "determining that the input is a portrait image when the ratio of the total area of the faces to the total area of the inputted image is less than or equal or equal to the predetermined value and the number of faces is less than the predetermined number".

Claim 2 further limits claim 1 by setting the predetermined value at 20% and the predetermined number of faces at three.

Applicant is reminded that the terms "not more" and "less than or equal to" mean the exact same thing.

So what happens, in an inputted image, when the ratio of the total area of all of the faces to the total area of the inputted image is 15% and there are two faces in the image? This image would be determined to be a snapshot photo image. And it would also be determined to be a portrait image. As the specification makes clear that these classifications are mutually exclusive in nature, the picture cannot be classified as both a snapshot image and a portrait image. As such, the claim is completely unclear and internally inconsistent. There is simply no way of applying a sensical -- much less reasonable -- interpretation of the claims.

The above analysis also applies to claims 3 and 4.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1and 2, the metes and bounds of these claim are unclear as presently recited.

Claim 1 recites "determining that the inputted image is a snapshot photo image when (a) a ratio of the total area of all of the faces to the total area the inputted image is not more than a predetermined value, or (b) the ratio of the total area all of the faces to the total area of the inputted image images (sp) is less than or equal to the predetermined value and the number of faces is greater than or equal to a predetermined number". Note that these are alternatively recited (using the word "or") conditions for determining whether the inputted image is a snapshot photo image. In other words, if either of the two criteria are met, this establishes the inputted image as a snapshot photo image.

Claim 1 further recites "determining that the input is a portrait image when the ratio of the total area of the faces to the total area of the inputted image is less than or equal or equal to the predetermined value and the number of faces is less than the predetermined number".

Claim 2 further limits claim 1 by setting the predetermined value at 20% and the predetermined number of faces at three.

Applicant is reminded that the terms "not more" and "less than or equal to" mean the exact same thing.

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would be determined to be a snapshot photo image. And it would also be determined to be a portrait image. As the specification makes clear that these classifications are mutually exclusive in nature, the picture cannot be classified as both a snapshot image and a portrait image. As such, the claim is completely unclear and internally inconsistent. There is simply no way of applying a sensical -- much less reasonable -- interpretation of the claims.

The above analysis also applies to claims 3 and 4.

A Note About Interpretation:

Because this is a rather egregious example of irreconciliably inconsistent claims and there is therefore a great deal of confusion and uncertainty regarding their metes and bounds, it would be improper to reject these claims on the basis of prior art. In re Steele, 305 F.2d 859 (CCPA 1962).

As a result, the interpretation of the previous set of claims (the claims as they were rejected in the non-final rejection) will be adopted. And the rejection of these claims provided below.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,301,440 to Bolle et al. ("Bolle").

Regarding claim 1, Bolle discloses judging the presence of person by detecting a face of person from an inputted image (See col. 4 line 20).

Bolle further discloses determining that the inputted image is a landscape photo image in the absence of person (See col. 4 lines 16-45).

Bolle further discloses calculating an area of face and counting the number of people in the presence of person (See col. 4 lines 29-39).

Belle discloses determining that the inputted image is a snapshot photo image based on the size of the area of the face and the number of people in the presence of the person (See Bolle col. 4 lines 27-43). Bolle does not expressly disclose making these determinations on the basis of a comparison with a threshold value. But it would have been obvious to a person having ordinary skill in the art at the time of the invention to make the determinations based on such a comparison. Indeed, this seems like the most intuitive way of making such a determination, and it was certainly well known in the art.

Regarding claim 2, Bolle does not expressly discuss threshold values or recite a specific one. But it would have been an obvious matter of design choice to choose 20%.

8. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Bolle and USPN 7,440,593 to Steinberg ("Steinberg").

Regarding claim 3, Bolle discloses means for performing all of the recited steps in claim 1. Bolle further discloses that processing of the image is altered on the basis of the image

detections. Bolle fails to expressly disclose these image alterations as chroma correcting and gradation correcting. Steinberg, in the same field of endeavour, does disclose these limitations (See, e.g., Steinberg col. 30 line 45 – line 31 line 14). It would have been obvious to a person having ordinary skill in the art at the time of the invention to include these specific type of processing because they are well know image processing methods and they are types of corrections that are known to be performed and work well alongside face detection schemes.

Regarding claim 4, please incorporate the above analysis with respect to claim 2.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick L. Edwards whose telephone number is 571-272-5371. The examiner can normally be reached on M-F, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bhavesh Mehta can be reached on 571-272-7453. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Patrick L. Edwards Art Unit 2624

/Bhavesh M Mehta/

Supervisory Patent Examiner, Art Unit 2624

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